

**SOAH DOCKET NO. 453-03-4353.M2  
MDR TRACKING NO. M2-03-1330-01**

<p>___,     <b>Petitioner</b></p> <p>V.</p> <p><b>AMERICAN HOME ASSURANCE COMPANY,</b>     <b>Respondent</b></p>	<p>§ § § § § § §</p>	<p><b>BEFORE THE STATE OFFICE</b></p> <p><b>OF</b></p> <p><b>ADMINISTRATIVE HEARINGS</b></p>
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**DECISION AND ORDER**

\_\_\_ (Claimant) disputes the decision of an Independent Review Organization (IRO) designated by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission, TWCC) affirming the denial by American Home Assurance Company (Carrier) of pre-authorization for a cervical myelogram and a CT scan. The Administrative Law Judge (ALJ) finds that preauthorization should be not be ordered because the requested treatment is not medically necessary.

**I. JURISDICTION, NOTICE AND VENUE**

The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. Chapter 2003. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.

Notice of the hearing was sent to the parties on August 18, 2003. Notice and jurisdiction are not contested and are addressed in the Findings of Fact and Conclusions of Law set out below.

ALJ John H. Beeler convened the hearing on May 18, 2004, in the William P. Clements Building, Fourth Floor, 300 West 15<sup>th</sup> Street, Austin, Texas. Petitioner appeared via telephone and was assisted by Luz Loza, Commission ombudsman. Carrier was represented by Jeffrey Fedespiel, attorney. The hearing concluded and the record closed that same day.

**II. BACKGROUND**

On \_\_\_, Claimant incurred a compensable injury when she slipped and fell while running from her place of employment to escape a robbery. More than two years later Claimant's treating physician requested preauthorization for a Cervical Myelogram with a CT scan. Carrier denied the request.

### III. DISCUSSION

#### 1. Applicable Law

The only issue in this case is whether, by a preponderance of the evidence, the requested treatment is shown to be medically necessary. Medical necessity is defined at TEX. LABOR CODE ANN. § 408.021(a), which states:

- (a) An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that:
  - (1) cures or relieves the effects naturally resulting from the compensable injury;
  - (2) promotes recovery; or
  - (3) enhances the ability of the employee to return to or retain employment.

Under 28 TAC § 148.21(h), the party that requested a hearing challenging the IRO decision has the burden of proof pursuant to TEX. LABOR CODE ANN. § 413.031. Thus, Claimant, as the Petitioner, must prove the requested treatment is reasonably required within the meaning of TEX. LABOR CODE ANN. § 408.021(a).

#### 2. Evidence

Claimant testified and offered three documents, which were admitted. Carrier offered two documents, which were admitted, and called one witness, Dr. Melissa Tonn, M.D..

##### 1. Claimant's testimony

Claimant testified that, when she fell while running from the robbery, she broke two fingers, injured her neck, and scratched her legs. She received treatment at an emergency room and therapy for her neck pain, but is still experiencing neck pain.

##### 2. Dr. Tonn's testimony

Dr. Tonn testified that she is a Medical Doctor, has been licensed since 1986, and was the preauthorization reviewing doctor for Claimant's request for the Cervical Myelogram with a CT

scan. Her review of Claimant's medical records shows no evidence of any abnormalities which would require surgery. A Cervical Myelogram with a CT scan would be appropriate, if such abnormalities were present, to determine specifically what surgery would alleviate the condition causing pain. It was over two years from the time of the compensable injury until Claimant requested the procedure, and any pain Claimant is actually experiencing would be the result of some event or degenerative condition that occurred after and unrelated to the compensable injury.

### **3. Documentary evidence**

Both parties offered medical records related to Claimant's condition and the compensable injury. The ALJ has reviewed the records and the discussion of them is set out in the analysis section below.

## **IV. ANALYSIS**

The medical records admitted at the hearing do not indicate any physical abnormality that would necessitate the requested procedure. While Claimant may be experiencing some degree of pain, there is nothing in the records demonstrating a connection between the pain and the compensable injury. Claimant's testimony also failed to establish such a connection. Claimant, therefore, failed to meet her burden of proof of establishing that the requested procedure is medically necessary to treat the compensable injury. Thus, Claimant is not entitled to preauthorization of the Cervical Myelogram and a CT scan pursuant to TEX. LABOR CODE ANN. § 408.021(a).

## **V. FINDINGS OF FACT**

1. \_\_\_\_ (Claimant) suffered a compensable injury to her back on \_\_\_\_, when she slipped and fell while running from a robbery being committed at the place of employment.
2. American Home Assurance Company (Carrier) was the insurance provider for Claimant's employer at the time of her injury.
3. More than two years after the date of the injury, Claimant's treating physician requested preauthorization for a Cervical Myelogram and CT scan.
4. Carrier denied Claimant's request for preauthorization on the basis of medical necessity
5. Claimant filed a timely request with the Texas Workers' Compensation Commission (the Commission, TWCC) for medical dispute resolution.
6. Claimant's request was assigned to an independent review organization (IRO) by the Commission's Medical Review Division (MRD).
7. The IRO issued a decision July 9, 2003, affirming Carrier's denial of the request for pre-authorization.

8. Claimant filed a timely request for hearing to contest the IRO decision.
9. Notice of the hearing was sent to the parties on August 18, 2003.
10. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. Administrative Law Judge John H. Beeler convened the hearing May 19, 2004, in the William Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Petitioner appeared via telephone and was assisted by Luz Loza, ombudsman. Carrier was represented by Jeffrey Fedespiel, attorney. The hearing concluded and the record closed that same day.
12. Claimant is presently experiencing pain, but the pain is not related to the compensable injury.
13. A Cervical Myelogram with a CT scan is not medically necessary to treat Claimant's compensable injury.

## **VI. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. Chapter 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
5. Claimant failed to meet her burden of proving the requested treatment is medically necessary and reasonably required within the meaning of TEX. LAB. CODE ANN. § 408.021(a).
6. Based on the foregoing Findings of Fact and Conclusions of Law, the requested treatment should not be pre-authorized.

**ORDER**

IT IS, THEREFORE, ORDERED that American Home Assurance Company is not ordered to pay the costs of the Cervical Myelogram and a CT scan requested by \_\_\_ for treatment of her compensable injury.

**SIGNED June 15, 2004.**

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**JOHN H. BEELER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**